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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,693	12/10/2001	Robert Sesek	10012626-1	3065

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EXAMINER

MCALLISTER, STEVEN B

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/006,693	<b>Applicant(s)</b> SESEK ET AL.	
	<b>Examiner</b> Steven B. McAllister	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-72 is/are pending in the application.
- 4a) Of the above claim(s) 42-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 62-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

***Election/Restrictions***

Newly submitted claims 42-61 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 42-50 are drawn to a method monitoring consumables used in a printing job, deriving a cost of the consumables used and comparing that cost with a budget plan. The original invention previously examined on the merits is a method of monitoring consumables and comparing the monitored value to usage rate profile data. These are two methods usable together.

The inventions are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, previously claimed invention has separate utility such as a method to monitor the supply of expendable items. See MPEP § 806.05(d).

Claims 51-61 are drawn to a method of monitoring and adjusting an amount of consumption of a consumable relative to a type of operation.

The inventions are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, previously claimed invention has separate utility such as a method to monitor the supply of expendable items independent of type. See MPEP § 806.05(d).

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Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 42-61 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 62-72 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 62, "hard imaging" is unclear.

Claims 66 and 67 are unclear because claim 62 recites that the usage information is consumption of a consumable, but claim 66 recites that it is indicative of wear of a consumable.

Also, claim 67 recites that the system "adjust the indication of wear" responsive to the type of imaging taking place. However, as understood by the examiner the specification and preceding claims show that the indication of wear is the "usage information" retrieved by the system, and that this information is actual data regarding the use of the consumables or wear on the components. As understood from the specification, the data that is changed in response to the type of imaging occurring is

the forecast of consumption to be used, not the data showing what use or wear has occurred.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 62, 66-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thieret (5,923,834) in view of Paton.

Thieret shows a controller configured to access usage rate profile data, comprising stored wear rate data or use rate of a consumable items; to monitor a parameter of the system indicating component wear or consumption of consumable items (e.g., col. 9, lines 50-55; col. 11, lines 17-23); and to generate an alert. Thieret does not explicitly show comparing the parameter with the usage rate data and generating the alarm when parameter deviates from the rate profile data. Paton shows comparing the parameter with the rate profile data, and generating an alert when the parameter deviates from the rate profile data. It would have been obvious to one of ordinary skill in the art to modify the method of Thieret by performing the steps of Paton in order to provide a warning when maintenance may have to be performed sooner than expected.

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As to claim 66, Thieret in view of Paton show usage wear comprising wear of a consumable part.

As to claim 67, Thieret in view of Paton show all elements except that the controller is configured to identify the type of imaging occurring and to adjust the indication of wear responsive to the identification. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the apparatus of Thieret by configuring the controller to identify the type of imaging occurring and to adjust the indication of wear responsive to the identification in order to better deal with different types of imaging situations.

As to claims 68, Thieret in view of Paton show usage profile information derived from prior consumption of the consumable.

As to claims 69 and 70, Thieret in view of Paton show all elements of the invention except disabling the system and means for doing so. Thieret in view of Paton does however, show determining that there is a hardware failure within the system (e.g., pg. 4, lines 3-12 of Paton). It is notoriously old and well known in the art to disable a malfunctioning system (and to provide a means for doing so). It would have been obvious to one of ordinary skill in the art to further modify the method of Thieret by disabling a malfunctioning system in order to prevent further damage.

As to claim 71, it is noted that Thieret in view of Paton shows auto-reordering.

Claims 62-65, 68 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over LoBiondo et al (5,305,199) in view of Paton (EP 0822524).

LoBiondo shows a controller configured to access usage rate profile data, comprising use rate of a consumable items; to monitor a parameter of the system indicating or consumption of consumable items; and to generate an alert. LoBiondo does not explicitly show comparing the parameter with the usage rate data and generating the alarm when parameter deviates from the rate profile data. Paton shows comparing the parameter with the rate profile data, and generating an alert when the parameter deviates from the rate profile data. It would have been obvious to one of ordinary skill in the art to modify the method of LoBiondo by performing the steps of Paton in order to provide a warning when additional consumables may be required sooner than expected.

As to claims 63 and 64, LoBiondo in view of Paton shows monitoring media usage comprising paper usage (see e.g., Fig. 3 of LoBiondo).

As to claim 65, LoBiondo in view of Paton shows monitoring a plurality of consumables (paper and toner).

As to claims 68, LoBiondo in view of Paton show usage profile information derived from prior consumption of the consumable.

As to claim 72, LoBiondo in view of Paton show all elements except that the controller accesses a budget plan, determines the cost of the consumption and generates an alert when the cost is over budget. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art

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to further modify the apparatus of LoBiondo by having controller access a budget plan, determine the cost of the consumption and generate an alert when the cost is over budget in order to avoid excess costs.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is 571-272-6785(703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven B. McAllister

Steven B. McAllister  
Primary Examiner  
Art Unit 3627

**STEVE B. MCALLISTER**  
**PRIMARY EXAMINER**